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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,170	07/31/2000	Michael J. Matsko	8613	4796

7590 06/18/2003

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[REDACTED] EXAMINER

SHAFFER, ERIC T

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding:

## Office Action Summary

Application No.	09/629,170	
Examiner	MATSKO, MICHAEL J.	
Eric T. Shaffer	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 7/31/2000.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 7/37/2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_ .

## **DETAILED ACTION**

1. The following is an initial Office Action upon examination of the above-identified application on the merits. Claims 1 – 14 are pending in this application.

### ***Claim Objections***

2. Applicant need to submit the related U.S. application numbers in page 1 of the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1 - 14** are rejected under 35 U.S.C. 102(b) as being anticipated by Frey et al (US 5,557,513).

As per claims 1, 4 and 11, Frey et al discloses a computer implemented method of storing a retail performance metric record, the retail performance metric record being a function of a retail performance metric and time type metric including the time elapsed waiting for and receiving an input, comprising the steps of:

receiving input indicative of an occurring event (column 4, lines 48 - 53, “when a person or object passes beneath these sensors, the system measures the height, speed, and length of the person or object and generates signals representing a time-dependent height profile of the person or object as the person or object moves past the sensor”);

determining the retail performance metric type of the input received (column 4, lines 59 – 61, “the system determines whether a particular person entering the store is a potential buyer as opposed, for example, to a small child”);

recording an entry record indicative of the input received (column 4, lines 63 - 67, “a shopper who is a potential buyer enters or exits through a doorway monitored by the recognition system 12, the recognition system records the time of the event and stores that information in an internal memory buffer so that the information is accessible to the computer”)

recording a retail performance metric record including the retail performance metric and the retail performance metric type (column 6, lines 2 – 3, “The POS system registers each transaction at the checkout and records the time of the transaction”).

5. As per claims 2 and 5, Frey et al discloses the method and system, wherein the entry record includes a time and an entry identifier field and the recording the retail performance metric record step comprises adding the entry identifier field value of the entry record associated with the retail performance metric to the retail performance metric record (column 3, lines 44 - 47, “the software of the present invention combines the shopper entry data, items purchased and estimated shopping times, and exit time data”), where the identifier is defined by the applicant as based on the beginning or entry time, the ending or exit time, and the type of item transaction.

6. As per claims 3 and 8, Frey et al discloses the method and system, wherein the retail performance metric record comprises an entry identifier field (column 3, lines 44 - 47, “the software of the present invention combines the shopper entry data, items purchased and

estimated shopping times, and exit time data”), a type field (column 5, lines 57, “determines whether a shopper is a “buyer” or a “no-buyer”), and a time field (column 5, lines 54 - 57, “during each update the system goes back 60 minutes, and for each minute of the past 60 minutes the recognition system has stored information on the shoppers who entered the store during that minute”).

7. As per claims 6, 9 and 12, discloses a computer implemented system for storing a retail performance metric record, the retail performance metric record being a function of the retail performance metric type and a retail performance metric including the time elapsed waiting for and receiving an input, comprising:

a processor for receiving and transmitting data (column 4, lines 53 – 55, “signals are transmitted to a signal processor, and from there to a central processing unit which processes the signals and generates data”);

a memory coupled to the processor, the memory having stored therein sequences of instructions which, when executed by the processor, cause the processor to receive input indicative of an occurring event, determine the retail performance metric type of the input received, record an entry record indicative of the input received, and record a retail performance metric record including the retail performance metric and the retail performance metric type (column 6, lines 2 – 6, “the POS system registers each transaction at the checkout and records the time of the transaction. A “transaction” is represented by a single buyer checking out through a checkout lane”).

8. As per claims 7 and 10, discloses The system of claim 6 wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to record the entry record including an entry identifier field and to record the retail performance metric record by adding the entry identifier field value of the entry record associated with the retail performance metric to the retail performance metric record (column 3, lines 44 – 48, “the software of the present invention combines the shopper entry data, items purchased and estimated shopping times, and exit time data”).

9. As per claims 13 and 14, Frey et al discloses the method and system, wherein the type field comprises an RPM (Retail Performance Metric) type and/or a time type category (column 4, lines 63 – 66, “a shopper who is a potential buyer enters or exists through a doorway monitored by the recognition system, the recognition system records the time of the event and stores that information in an internal memory buffer”).

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***Conclusion***

10. No claims were allowed and all claims were rejected.
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schlesinger (US 3,808,410) – Traffic measurement in a retail store.  
Frey et al (US 5,138,638) – Traffic measurement in a retail store.  
Shahbaz et al. (US 4,528,679) – Traffic measurement in a common carrier.  
Frey et al (US 5,305,390) – Object recognition and counting.  
Katsof et al (US 4,700,295) – Traffic measurement in a bank.  
Dextraze et al. (US 5,541,835) – Traffic measurement in a bank.  
Nelson et al. (US 5,390,107) – Traffic measurement in a retail store.  
Mold (US 5,978,772) – Merchandise checkout system.  
Malec et al (US 5,295,064) – Shopping cart tracking system.  
[www.retailsystems.com](http://www.retailsystems.com) as archived on January 17, 1999.  
[www.acnielsen.com](http://www.acnielsen.com) as archived on October 1, 1999.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:  
Commissioner of Patents and Trademarks  
Washington D.C. 20231

Or faxed to:

(703) 746-7238 [After Final communications, labeled "Box AF"]

(703) 305-7687 [Official communications]

(703) 706-9124 [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 2, 2121 Crystal Drive, Arlington, VA, 4<sup>th</sup> floor receptionist.

ETS

June 11, 2003

Romain Jeanty  
Art Unit 3623